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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: KIN - 173918

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 25, 2016, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group - PSG regarding Kinship Care, a hearing was held on May 18, 2016, by telephone.

The issue for determination is whether the respondent correctly discontinued petitioner's Kinship Care benefits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, WI 53703

By: [REDACTED]  
Professional Services Group - PSG  
1126 S 70th Street  
Suite N 200  
West Allis, WI 53214

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She is the grandmother of a grandson, "KW" (age 3).

2. Due to KW's mother's historical contacts CPS in Illinois, Kinship benefits were previously approved for petitioner.
3. The whereabouts of the father of KW is unknown.
4. Based upon the evidence in the hearing record, KW's mother does not carry a known mental health diagnosis, and she is not currently treated for any mental health issues.
5. On April 15, 2016, the Department by the Kinship Care program issued a discontinuance letter to the petitioner informing her that her Kinship Care benefits for KW were discontinued because the child does not meet any of the criteria to be considered a child or juvenile in need of protection or services, or likely to meet such criteria in the future. See, Exhibit #1.
6. On April 25, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the Department's action to discontinue Kinship Care benefits for KW.

### DISCUSSION

The Kinship Care benefit is a public assistance payment per child paid to a qualified relative who bears no legal responsibility to support the child. To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6).

For Kinship Care cases in which the relative is not a guardian appointed under Wis. Stat. § 48.977, the conditions listed in § 48.57(3m)(am) must be met. The pertinent "conditions specified in par. (am)" are as follows:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there *is a need for the child to be placed* with the kinship care relative **and** that the placement with the kinship care relative *is in the best interest of the child*.
2. The county department or department determines that the child meets one or more of the criteria specified in s.48.13 or 938.13 **or** that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home.

(Emphasis added) *Id.*, (3m)(am)1, 2.

Here, the record does not demonstrate that petitioner has been appointed guardianship of KW under Wis. Stat. § 48.977.

The Department of Children and Families has set forth a policy pertinent to these standards as follows:

As the relative who receives the Kinship Care payment has no legal obligation to support the children for whom she is caring, the Kinship Care statute mandates there be an established need for the relative to provide care for the children. In addition to being in the best interests of the child, the agency must determine that the child would be at risk of abuse or neglect if returned to his or her natural parent.

DHFS Policy Memo, Vol. 2 of the *Kinship Care Questions and Answers*, p.23, question 9, issued January 5, 1998. The abuse and neglect statutory sections referenced above – Wis. Stat. § 48.13 and Wis. Stat. § 938.13, both concern children in need of protection or services. To meet that standard, a child must be the victim of abuse or at substantial risk of becoming a victim of abuse. Or a child's parent must refuse, neglect, or be unable (for reasons other than poverty) to provide necessary care, food, clothing, medical or dental care so as to seriously endanger the physical health of the child. Wis. Stat. § 48.13(3),(3m),(10).

In addition, effective February 1, 2002, the Wisconsin Administrative Code, Chapter 58, was repealed and recreated to codify the Kinship Care program. Wis. Adm. Code, § HFS 58.10(1) describes the “need” for placement as follows:

- (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:
  1. The child’s need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
  2. The child’s need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
  3. The child’s need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
  4. The child’s need for a safe or permanent family can be better met with the relative than with the child’s parent or parents.

In Decision No. KIN-40/51985, dated May 22, 2002, the Department’s deputy secretary concluded that even when the assessor finds that one of the four grounds cited above are met, there still must be evidence that there is a risk to the child cited in Wis. Stat. § 48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in Wis. Stat. § 48.57(3m)(am) (i.e., “need” and “best interests”) *and* that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHIPS) case.

This is a close case. In the past, the caregiver *did* qualify and receive Kinship for KW due to his mother’s contacts with CPS in Illinois. But circumstances have changed. KW’s mother lives in the community in a stable residence. There have been no contacts with CHP in the last 12 months. She is caring, apparently without any reported problems or concerns, for one of her children, who has medical concerns. She is living with her boyfriend and attending school. She indicated in her interview with respondent that she wants to have both of her children with her, but is not financially able to care for both.

Based on the foregoing evidence, the preponderance of the evidence causes me to conclude several things. The need for the living arrangement is largely established under the four prong test for “need”, because KW provides a better home for the three children. In addition, it is apparent that the placement is the most beneficial in terms of stability, care, and long-term parental guidance, i.e., in their best interests.

However, this fact pattern does not present enough to justify the continuation of Kinship to KW. KW’s mother has no known criminal or CPS issues, and she does not receive any treatment for any putative mental health concerns. She cares for one child in a stable home. I can only conclude on this record that there is no evidence that supports any conclusion that KW’s mother would place KW at significant risk of neglect for food, clothing, shelter or medical/dental cares for reasons other than poverty.

Therefore, I must ultimately conclude that the county agency correctly discontinued petitioner’s benefits for KW because he does not meet any of the criteria to be considered a child or juvenile in need of protection or services; nor is he likely to meet such criteria in the future. Failing this last part of the eligibility test, even while passing the need and best interest thresholds, means she is ineligible for Kinship Care benefits.

**CONCLUSIONS OF LAW**

That the Department correctly discontinued petitioner's Kinship Care benefits for KW.

**NOW, THEREFORE, it is ORDERED**

That the petition for review herein be, and the same hereby is, dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 16th day of August, 2016

\s\_\_\_\_\_  
Peter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on August 16, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care